

REMARKS

Applicant respectfully requests reconsideration and continued examination in view of the amendment and the following remarks. Claims 1-29 are pending in this application.

1. Status of the Claims

Claims 1-29 are pending in this application. Claims 1 and 14 have been amended. Support for the amendments can be found in the original application as filed on the following pages, for example:

Page 2, lines 13-20;

Page 4, lines 22-24; and

Page 7, line 17 through Page 8, line 3.

Additionally, new claims 21-29 have been added. Support for the new claims can be found in the original application as filed on the following pages, for example:

Page 3, lines 2-7;

Page 5, lines 15-19; and

Page 8, lines 13-17.

2. Prior Art Rejections

The Examiner rejected claims 1-3, 5, 6, 14, and 16-18 under 35 U.S.C. § 102(b) as being anticipated by DE Patent No. 2844242 to Ausrus (Ausrus). Additionally, the Examiner rejected claims 4, 7, and 8 as being obvious over Ausrus in view of U.S. Patent No. 5,109,153 to Johnsen et al., (Johnsen). Further, the Examiner rejected claims 9-13, 15, and 19-20 as being unpatentable over U.S. Patent No. 5,602,377 to Beller et al. (Beller) in view of Johnsen.

2. 35 U.S.C. 102(b) Rejections

Applicants have amended claim 1 to recite that the system for verifying

the purchase of a retail item of the claimed invention includes a point of sale station having a point of sale encoding device, the encoding device providing a machine-readable post-purchase indicia associated with the label during purchase by the customer and a return station at a different location from a location of the point of sale station having a detecting device for analyzing the label to determine whether the post-purchase machine-readable indicia is present. Similarly, claim 14 has been amended to clarify that the method for verifying the purchase of a retail item of the claimed invention includes encoding a machine-readable post-purchase associated with the label by a point of sale encoding device at the time of purchase and upon return of the retail item, analyzing said label with a detecting device to determine whether the machine-readable post-purchase indicia is present.

In view of the amendments, Applicants submit that neither Ausrus, Johnson, or Beller, alone or in combination, teach or suggest the present invention as none of the references teach or suggest, alone or in combination, a method or system wherein a post-purchase machine-readable indicia is encoded on a single label at a point of purchase and wherein the label is thereafter analyzed upon return of the item for the presence of the post-purchase machine readable indicia on the label.

First, the invention of Ausrus is vastly different from the present invention. Ausrus discloses a fraud prevention system which merely ascertains whether or not an item has been purchased, and provides no further information. Thus, Ausrus is a standard anti-theft device as is often seen at libraries, department stores, and the like, which only monitors whether an individual has purchased an item as they walk out the store's door, for example, and is wholly unconcerned with analyzing the label upon return of the retail item.

As such, Ausrus does not disclose or remotely suggest detecting a post-purchase machine-readable indicia at a return station or upon returning the retail item. The label of Ausrus is described in the Abstract as having "[a]

label including circuit with PAID and NOT PAID states which are tested by monitoring device." A cancellation device may change the state from "not paid" to "paid" and a monitoring device may then determine whether the device bears the "not paid" or "paid" state as an individual walks out an exit, for example. However, Ausrus does not teach or suggest a purchase verification system which provides purchasing information upon return of the item. Thus, there is no teaching or suggestion in Ausrus for a method or system wherein a post-purchase machine-readable indicia is encoded on a label at a point of purchase and wherein the label is thereafter analyzed upon return of the item for the presence of the post-purchase machine readable indicia on the label.

Further, Johnsen does not teach or suggest the claimed invention, and does not fill in the deficiencies of Ausrus. Johnsen, like Ausrus, is substantially different from the present invention. Johnsen is merely concerned with producing a human readable "void" indicia on articles such as checks, currency, stock certificates, and the like by the application of radiant energy. In particular, Johnsen teaches a coupon or the like which has on its printed surface a coating of material peculiarly responsive to a form of radiant energy. Johnsen, col. 3, lines 23-26. The coupon may then be irradiated when used by radiant energy to provide a human readable "void" indicia or other visible reading on the face of the label to indicate the coupon is no longer valid or usable. Since the invention of Johnsen is directed to providing a simple visible indication that the item (coupon, check, etc.) is no longer valid, Johnsen has absolutely no disclosure or suggestion as to a label associated with an item which is meant to be encoded with a machine-readable indicia at the time of purchase and thereafter analyzed upon return of the item for the indicia. The label of Johnsen, once radiated, merely yields a clear human readable indication that the article is no longer usable or valid, and thus there would be no logical reason for an individual to attempt to return the voided article. Therefore, there is no teaching or suggestion in

Johnsen as to a method or system wherein a post-purchase machine-readable indicia is encoded on a label at a point of purchase and wherein the label is thereafter analyzed upon return of the item for the presence of the post-purchase machine readable indicia on the label

Moreover, Beller does not teach or remotely suggest the claimed invention and further clearly teaches away from the claimed invention. Beller is wholly concerned with providing an item with a second independent and modified bar code label upon purchase of the item, for example. The Beller apparatus retrieves data by scanning a first bar code. Additional data is added to the scanned bar code data to produce a modified bar dataform. The modified dataform is subsequently printed on a second or new bar code label which may be affixed to the product. Beller, col. 4, lines 18-62.

Thus, Beller clearly teaches away from the present invention as Beller requires a second label to be printed and affixed to the product and is wholly silent as to analyzing the original label upon the return of the merchandise to determine whether a point of sale post-purchase indicia has been added to the original label as in the claimed invention. Teaching away is a *per se* demonstration of lack of *prima facie* obviousness. *In re Dow Chemical Co.*, 837 F.2d 469 (Fed. Cir. 1988). Moreover, a reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be led in a direction divergent from the path that was taken by the applicant. *Tec Air, Inc., v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360 (Fed. Cir. 1999). Beller would clearly lead one skilled in the art in a direction divergent from the present invention.

In particular, upon a full reading of Beller, one skilled in the art would be fully steered away from encoding the original label with a machine-readable indicia because there is no suggestion whatsoever in Beller that the information provided on the second label could be provided on the first label. One skilled in the art would believe in view of the Beller reference that a second label would need to be created to provide additional information

related to the purchase of a retail item. Therefore, not only does Beller not teach or suggest the claimed invention but also Beller also fully teaches away from the claimed invention.

In view of the foregoing amendments and remarks, neither Ausrus, Johnsen, or Beller, alone or in combination teach or suggest the present invention because no reference, alone or in combination, a method or system wherein a post-purchase machine-readable indicia is encoded on a label at a point of purchase and wherein the label is thereafter analyzed upon return of the item for the presence of the post-purchase machine readable indicia on the label. Therefore, Applicant respectfully submits that claims 1-29 recite patentable subject matter over the prior art and requests that the prior art rejections be withdrawn.

CONCLUSION

In view of the foregoing, claims 1-29 are allowable and an early indication of allowance is solicited.

Respectfully submitted,


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